IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7506 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARDAR PATEL CO - OP. HSG. SOC. LTD. - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 14/03/2007

ORAL JUDGMENT

1. The short facts of the case are that the petitioner is a registered Cooperative Society and it is having the land bearing Survey

No.104/2, which was converted for non-agricultural use in the year 1971. It appears that as per the permission granted under Section 65 of the Code in the year 1971 certain area was marked as the common plot. The petitioner thereafter applied to the Dy. Town Planning Officer, Town Planning Department under Gujarat Town Planning and Urban Development Act (hereinafter referred to as “the T.P. Act/Act”) for permitting construction of 1/6th part of the common plot and the said permission came to be granted on 8.2.1994. It appears that based on the same, on 3.5.1994, Bharuch Municipality also granted permission under Section 29 of the T.P. Act for making construction over 1/6th part of the common plot. As per the petitioner, the construction had started. However, on 9.6.1996 respondent No.2, the Collector, Bharuch passed the order for removal of the construction over the common plot and as per the petitioner, 40% of the construction was already demolished pursuant to the said order of 21.6.1996, but on account of the injunction granted by the Civil Court at the instance of the Contractor, the demolition was stopped and thereafter the order

of demolition was forwarded to the petitioner society by respondent No.2. The petitioner preferred the revision before the State Government against the order of the Collector and ultimately the said revision was dismissed and it is under these circumstances the present petition.

2. Heard Mr.Patel, learned Counsel for the petitioner and Mr.Chhaya, learned AGP for the respondents.

3. Mr.Patel, learned Counsel appearing for the petitioner, raised the first contention that no opportunity of hearing whatsoever was given by the Collector before passing the impugned order of demolition. He further submitted that had the hearing been given by the Collector, the petitioner could have pointed out that the permission was granted by the competent authority under the TP Act and in view of the decision of this Court in the case of **“Karimbhai Kalubhai Belim and Ors. v. State of Gujarat and Anr.”, reported in 1996(1) GLH, 200**, the permission under Section 65 of the Bombay Land Revenue Code (hereinafter referred to as “the

Code”) was not required once the permission was granted under Section 29 of the TP Act and, therefore, he submitted that the order is in breach of the principles of natural justice. He also submitted that as such, the construction is being made by the Society itself and is for providing facilities of various consumer items to its members and the permission is also granted for construction of common hall and he, therefore, submitted that as such as per the decision of the Society, resolution is passed for allotment of the shops to the members of the Society itself and the hall is to be used for common facilities, however, as no opportunity of hearing was given, all such aspects could not be pointed out and, therefore, he submitted that the order passed by the Collector may be quashed and set aside.

4. Mr.Chhaya, learned AGP submitted that as such, the petitioners are the persons, who got the land converted for N.A. in the year 1971 and at that time, the common plot was already provided under the Code while granting sanction for N.A.

Thereafter, it is not open to the petitioner to contend that the provisions of Section 65 of the Code would not apply if the development permission is granted by the authority under the Act. He also submitted that as such in the order of the State Government, there is a reference that the explanation was called for from the Society by the Dy. Collector and the same is considered and, therefore, it cannot be said that the order is in breach of the principles of natural justice. He further submitted that if common plot is provided, it must be maintained as common plot and members or the Society cannot be permitted to make construction for their benefit and, therefore, he supported the order passed by the Collector and its confirmation thereof by the State Government.

5. It appears that the reference of the explanation of the Society was before the Dy. Collector, whereas the order was passed by the Collector. Even if the Collector is to proceed for breach of the provisions of Section 65 of the Code, the

formal show-cause notice is required to be issued or at least, hearing is required to be given to the Society before taking any final decision. Had the opportunity been given to the petitioner, proper facts would have been brought before the Collector, including that of the decision of this Court upon which the reliance is placed by the petitioner. Under these circumstances, as the hearing has not been given by the authority, who has passed the order, it appears that the order is in breach of the principles of natural justice.

6. It appears that the matter is at the stage where the demolition of the building was in part and at that stage, the revision was preferred and even pending the matter before this Court, the status-quo is ordered to be maintained. Therefore, until the Collector decides the matter, at least the petitioner cannot now proceed for making construction pursuant to the permission, which has expired long back. At that stage, the petitioner may put forward the case for utilization of the constructed portion

exclusively for the members of the Society, including that of the consumer store, etc., and the Collector may examine the aspect as to whether construction permitted is essentially for the common facilities of the members or not. In my view, all such aspects, as such, are to be finalized by the Collector and it is not necessary for this Court to conclude on such aspects.

7. In view of the above, the impugned order passed by the Collector and its confirmation thereof by the State Government is quashed and set aside with the directions that the Collector shall give opportunity of hearing to the petitioner and at that stage, the petitioner may put forward the case, as may be available in law, and after giving opportunity of hearing, the Collector shall pass a fresh order in accordance with law, within a period of six months from the date of receipt of the order of this Court. It is further observed and directed that until the Collector passes fresh order, status-quo qua the present construction and the demolition of the

property shall be maintained and the rights of the parties shall stand governed as per the final order, which may be passed by the Collector, of course, without prejudice to the rights of the aggrieved party to challenge the order of the Collector before the higher forum, as may be permissible in law.

8. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.

15.3.2007 **(Jayant Patel, J.)**

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